The Salvation Army of Massachusetts Dorchester Day Care Center *and* District 65, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America. Cases 1-CA-18292 and 1-CA-18786

13 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 29 June 1982 Administrative Law Judge Irwin H. Socoloff issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Salvation Army of Massachusetts Dorchester Day Care Center, Boston, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.[2]

CHAIRMAN DOTSON, dissenting.

My colleagues here assert jurisdiction over a day care center operated by a religious and charitable organization as part of its mission of social service. I dissent.

In my opinion it does not effectuate the policies of the Act to extend the Board's discretionary jurisdiction to noncommercial aspects of nonprofit, charitable institutions except in unusual circumstances. Previously I have stated that I would follow the policy set of in *Ming Quong Children's Center*[1] and decline to exercise jurisdiction over nonprofit, charitable institutions except where a particular class of these institutions has a massive impact on interstate commerce.[2] Such a policy of restraint is sound and in my judgment is necessary to conserve the Board's resources, focus its efforts on substantial labor disputes, and resolve those disputes expeditiously. The Board can perform its statutory function effectively only if it confines its jurisdiction to disputes of consequence and refrains from attempting to regulate employers whose activities are but remotely related to industry and trade.

In this particular case the nature of the employer's activity in addition to its nonprofit, charitable status convinces me that the Board should not exercise discretionary jurisdiction. The Respondent, consistent with its mission of social services, provides day care for young children. It employs about nine teachers, a janitor, a cook, and a social worker. Like other day care centers it is subject to considerable supervision by state authorities. It is licensed by the Massachusetts Office for Children and must satisfy requirements dealing with safety and physical conditions at the facility, the number and qualifications of teachers, the ratio of teachers to children, staff time devoted to administrative duties, and availability of information about personnel policies.

I conclude that the day care provided by the Respondent is essentially a local service that has little relationship to industry. The center's operations do not represent a field of substantial labor tension and potential disputes that would have relatively minor consequence to commerce. Therefore I would not assert jurisdiction over this employer. Further I do not accept the Board's practice of asserting discretionary jurisdiction over day care centers that have a gross annual income of $250,000 or more. I think that the dollar volume selected is unrealistically low and that assertion of jurisdiction over such day care operations is an unwise allocation of resources. Efficient administration of the Act calls for moderation by the Board in exercising its discretionary jurisdiction.

[1] Member Dennis finds it unnecessary to pass on the question whether the Board should raise its discretionary jurisdictional standard for day care centers. The Respondent makes no such contention, and "it is well settled that the issue of jurisdiction under the Board's discretionary standards must be timely raised." *Anchortank, Inc.*, 233 NLRB 295 fn. 1 (1977).

[2] We have modified the notice to conform to the judge's recommended Order.

[1] 210 NLRB 899 (1974). See also the dissenting opinions in *St. Aloysius Home*, 224 NLRB 1344 (1976), and in *Michigan Eye Bank*, 265 NLRB 1377 (1982).

[2] See my dissenting opinion in *Alan Short Center*, 267 NLRB 886 (1983).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District 65, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, as the exclusive bargaining representative of our employees, in the appropriate bargaining unit:

> All teachers, the janitor, cook and social worker employed at our 26 Wales Street, Dorchester, Massachusetts, location, excluding all other employees, guards, the assistant director, the educational coordinator, managerial employees and all supervisors as defined in the Act.

WE WILL NOT demand, as a condition of negotiations, that the Union agree to a "religious mission" clause, a nonmandatory subject of bargaining.

WE WILL NOT make unilateral changes in the rates of pay, wages, hours, and other terms and conditions of employment of the bargaining unit employees.

WE WILL NOT issue warning notices, impose suspensions, or dock the pay of employees because they support the Union.

WE WILL NOT interrogate employees about their union activities.

WE WILL NOT inform employees that union activities will not be tolerated or instruct employees to remove themselves from the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the Union as the exclusive representative of all employees in the appropriate unit, described above, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an agreement is reached, WE WILL embody such agreement in a signed contract.

WE WILL rescind the unilateral changes made in the rates of pay, wages, hours, and working conditions of the bargaining unit employees. However, we are not required to vary or abandon implemented wage increases.

WE WILL make employees whole for any losses they may have suffered as a result of the unilateral changes in rates of pay, wages, hours, and other terms and conditions of employment, plus interest.

WE WILL rescind the warning to, and suspension of, Doris Reynolds, and remove any reference thereto from our personnel records.

WE WILL make Doris Reynolds whole for any losses she may have suffered as a result of the discrimination against her, plus interest.

THE SALVATION ARMY OF MASSACHUSETTS DORCHESTER DAY CARE CENTER

DECISION

STATEMENT OF THE CASE

IRWIN H. SOCOLOFF, Administrative Law Judge. Upon charges filed on February 3, 1981, and on June 19, 1981, by District 65, International Union, United Automobile, Aerospace & Agricultural Implement Workers of (the Union) against The Salvation Army of Massachusetts Dorchester Day Care Center (Respondent), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1, issued an order consolidating cases, amended complaint and notice of hearing dated July 28, 1981, alleging violations by Respondent of Section 8(a)(5), (3), and (1) and Section 2(6) and (7) of the National Labor Relations Act (the Act). Respondent, by its answers, denies the commission of any unfair labor practices.

Pursuant to notice, trial was held before me in Boston, Massachusetts, on December 2 and 3, 1981, at which the General Counsel and the Respondent were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the parties filed briefs which have been duly considered.

On the entire record in this case, and from my observations of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a nonprofit Massachusetts corporation,[1] operates a day care center located in Boston, Massachusetts, herein called the Dorchester facility. Annually, it has a gross volume of business in excess of $250,000 and receives at the Dorchester facility goods valued in excess of $50,000 which are shipped directly from points located outside the Commonwealth of Massachusetts. I find, based on the above, and for the reasons stated hereinafter, that Respondent is an employer engaged in com-

[1] At the hearing, Respondent argued that the day care center involved herein is owned and operated by the Salvation Army, Incorporated, a New York corporation. However, the Board, based on the stipulation of the parties, has previously found, at 247 NLRB 413, that Respondent is a Massachusetts corporation.

merce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

District 65, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

On February 27, 1979, the Union filed a representation petition with the Board, seeking to represent the teachers employed by Respondent at the Dorchester Day Care Center. Thereafter, on March 21, the parties executed a Stipulation for Certification Upon Consent Election in which they agreed that Respondent, a nonprofit Massachusetts corporation engaged in commerce within the meaning of the Act, operates a day care center at the Dorchester location. The parties further agreed that the appropriate collective-bargaining unit is:

> All teachers, the janitor, cook and social worker employed by the Employer at its 26 Wales Street, Dorchester, Massachusetts location, but excluding all other employees, guards, the assistant director, the educational coordinator, managerial employees and all supervisors as defined in the Act.

Pursuant thereto, the Board, on April 20, 1979, conducted an election which was won by the Union. On April 27, Respondent filed postelection objections in which it asserted, inter alia, that the Board "does not have jurisdiction over the Employer in light of *NLRB v. The Catholic Bishop of Chicago*, 47 LW 4283, 100 LRRM 2913 (1979), which holds that coverage of the National Labor Relations Act does not extend to lay teachers employed by church-operated schools." Thereafter, on June 13, 1979, the Acting Regional Director for Region 1 issued his Report on Objections recommending that the objections be overruled in their entirety and that a certification of representative be issued. On exceptions filed by the Employer, the Board, on January 18, 1980, in *Salvation Army of Massachusetts*, 247 NLRB 413 (1980), adopted the recommendations of the Acting Regional Director and certified the Union.

In the instant case, the General Counsel contends that Respondent violated Section 8(a)(5) of the Act by demanding, as a condition of continuing negotiations, that the Union agree to a "religious mission" clause, a nonmandatory subject of bargaining, and by refusing to meet and bargain with the Union about mandatory subjects of bargaining. Respondent again urges that, in light of the *Catholic Bishop of Chicago* decision of the Supreme Court, 440 U.S. 490, the Board cannot properly assert jurisdiction over it. Respondent further contends that, in any event, it was privileged to insist on union agreement to a contractual "religious mission" clause.

The complaint in this matter also alleges that Respondent violated Section 8(a)(5) of the Act by making unilateral changes in the rates of pay, wages, hours, and other terms and conditions of employment of the bargaining unit employees; violated Section 8(a)(3) of the Act by issuing a written warning notice to employee Doris Reynolds, imposing a suspension on her, and docking her in the amount of 1-1/2 hours' pay; and violated Section 8(a)(1) of the Act by interrogating employees about their union activities, informing them that union activities would not be tolerated, and instructing employees to remove themselves from the Union. At the hearing, Respondent stated that it would not contest these matters and would agree to have findings made, and an order issued, based on the complaint allegations.

B. *Assertion of Jurisdiction; Appropriate Unit; Majority Status*

As indicated, Respondent raised its *Catholic Bishop* contention before the Board in the representation case. There, the Board looked beyond the parties' stipulation, noting that "the Employer has raised the question of statutory rather than discretionary jurisdiction and, were we to find that this case involved 'teachers in church-operated schools' within the meaning of *The Catholic Bishop of Chicago*, the stipulation would be contrary to the Act, and the Board could not honor it." Examining the issue on the merits, it concluded:

> The Board has held that day care centers are primarily concerned with custodial care of young children, and only secondarily concerned with education. We, therefore, find that the principles operative in The Catholic Bishop of Chicago do not preclude our assertion of jurisdiction here. Accordingly, we adopt the Acting Regional Director's recommendation that the objection to the Board's jurisdiction be overruled, and we shall therefore certify the Petitioner.

As Respondent has not proffered newly discovered or previously unvailable evidence, or shown special circumstances, I am bound by the Board's prior determination. *M.N. Clark's Discount Department Store*, 175 NLRB 337 (1969).[2] I therefore conclude that assertion of jurisdiction in this case is consistent with the Board's jurisidictional policies. Likewise, based on the prior determination of the Board, I conclude that the Union is the majority representative of Respondent's employees in an appropriate unit.

C. *The 8(a)(1) and (3) Violations; Unilateral Changes*

As noted, Respondent has chosen not to contest the complaint allegations dealing with conduct in violation of Section 8(a)(1) and (3) of the Act, and certain unilateral changes in terms and conditions of employment in violation of Section 8(a)(5). Accordingly, based on the complaint allegations, I find and conclude that

1. In late March 1981, Respondent by its supervisor H. Kenneth Muck violated Section 8(a)(1) of the Act by in-

[2] Indeed, Respondent has not offered any evidence in conflict with the Board's findings and conclusions.

terrogating an employee concerning that employee's union sympathies.

2. On April 29, 1981, Respondent by its supervisor H. Kenneth Muck violated Section 8(a)(1) of the Act by telling an employee that union activities would not be tolerated.

3. On May 11, 1981, Respondent by its supervisor H. Kenneth Muck violated Section 8(a)(1) of the Act by interrogating an employee concerning that employee's union activities.

4. In June 1981, Respondent by its supervisor H. Kenneth Muck violated Section 8(a)(1) of the Act by instructing an employee to remove herself from the Union.

5. On May 12, 1981, Respondent violated Section 8(a)(3) of the Act by issuing a written warning to employee Doris Reynolds, suspending her, and "docking" her 1-1/2 hours' pay because she supported the Union.

6. Respondent violated Section 8(a)(5) of the Act by making unilateral changes in the rates of pay, wages, hours, and other terms and conditions of employment of the bargaining unit employees, as follows:

(a) On April 16, 1981, it instituted changes in its system for compensating employees for overtime work, including, inter alia, requiring teachers to fill out timesheets.

(b) On May 12, 1981, it instituted new rules concerning the use of compensatory time by employees, including disciplinary rules for violation of the new compensatory time rules.

(c) In June 1981, it granted to the employees a 7-percent wage increase, retroactive to June 1980.

(d) On July 1, 1981, it reduced the teachers' afternoon break from 45 to 30 minutes; reduced the number of teachers from nine to eight; laid off, or placed in a substitute category, one teacher; changed the number of teachers assigned to a classroom; changed the starting times for classes and teachers' work shifts; and created new job classifications and pay scales for bargaining unit employees.

D. *The "Religious Mission" Clause; The Refusal to Bargain*[3]

Respondent and the Union met at six bargaining sessions during the September to November 1980 period. At the first meeting, on September 19, the Union presented its noneconomic proposals. The Union's economic proposals were given to Respondent during the meeting of November 6. At a session held on November 20, the Union's chief negotiator, Leslie Sullivan, asked that Respondent present its counterproposals. Donald Carmody, the chief negotiator for Respondent, stated that he did not want to waste his client's money by drafting counterproposals since the noneconomic provisions contained in the Union's contract with another employer, Associated Day Care Services, was what Respondent was "willing to take." Carmody added that those noneconomic provisions were what Respondent would accept and, therefore, there was no point in negotiating "any of these other clauses." However, at the end of the session, on insistence by the Union, Carmody agreed to prepare a set of counterproposals.

As Respondent was not available for meetings in December, the parties next met on January 8, 1981, at which time Respondent presented its counterproposals. Those proposals contained, as part of an "Agency Functions and Management Rights" clause, the following provisions:

> The parties recognize that the Army is an international, religious, and charitable movement, organized and operated as a branch of the Christian Church, based upon a motivation of a love of God and a concern for the needs of humanity expressed by a wide variety of social services, including the functions of the Center, which are extended to all persons without discrimination as to race, color, creed, or national origin.
>
> The parties further recognize that the operation of the Center is an integral part of the mission of the Army, and that neither the Union nor any employee shall engage in any activity which interferes with, or contests the mission of the Army.

When Respondent met with the Union on January 9, Carmody referred the negotiators to the foregoing provisions and stated that the parties had to arrive at an agreement on a contract clause dealing with the ecclesiastical authority of the Salvation Army. When Sullivan requested bargaining about other matters, Carmody stated that he did not think that there was any point in discussing anything else until the "ecclesiastical issue" was resolved. Sullivan replied, stating that the Union would agree to a management rights clause, but that the matter of religion was not an appropriate subject of collective bargaining. Carmody said that the matter of union use of Respondent's bulletin board was an ecclesiastical issue since the Army wanted the right to remove any matter, posted by the Union, in conflict with Respondent's religious beliefs. Likewise, Carmody stated, negotiation of a discipline and discharge clause presented an ecclesiastical issue since the Army did not want the Union to have the right to grieve, through arbitration, the discipline or discharge of an employee for obstructing the mission of the Army. Carmody added, "Well, maybe the only thing I'm willing to talk about right now is those issues that have to do with the ecclesiastical authority." Sullivan said that the parties should be talking about wages, hours, and working conditions and Carmody replied that the ecclesiastical issue would have to be resolved first as the matter "would be constantly hanging us up." Sullivan set forth the Union's position, namely, that it was not willing to discuss religion, as such, but that it was willing to negotiate a management rights clause and to discuss any religious problems caused by specific clauses dealing with wages, hours, and working conditions. Carmody reiterated that he would only discuss those matters related to the religious mission clause. Finally, he stated that "I have no intention of talking about discussing wages, hours and working conditions where the Union is refusing to negotiate the relevance of the Army's ecclesiasti-

[3] The factfindings contained in this section are based, primarily, on the credited, substantially uncontradicted, testimony of Leslie Sullivan, the Union's chief negotiator at all collective-bargaining sessions.

cal role . . . there's no point in our talking anymore." At that point, Respondent's negotiating team left the meeting room.

Several days later, Sullivan placed a telephone call to Carmody and asked if Respondent would attend another meeting. Carmody asked if the Union were willing to negotiate about the ecclesiastical authority of the Army. Sullivan stated that while the Union did not regard the subject of religion as appropriate for collective bargaining, the Union would discuss any ecclesiastical questions raised by other contract clauses in conjunction with the negotiation of such clauses. Carmody said that Respondent would not attend another collective-bargaining meeting unless the Union agreed to include an ecclesiastical or religious mission clause in the contract.

The parties have not met since January 9, 1981. On April 29, at a meeting of the teaching staff, Respondent's supervisor Muck informed the employees that an ecclesiastical authority clause had to be settled upon before contract negotiations could resume.

As an ecclesiastical authority, or religious mission, clause, such as the one proposed by Respondent in January 1981, does not bear a direct relationship to wages, hours, or working conditions, it is not a mandatory subject of bargaining. Thus, when Respondent demanded, as a condition of continuing negotiations, that the Union agree to such a contract clause, Respondent violated Section 8(a)(5) of the Act. Indeed, even if such a matter were a mandatory subject of bargaining, Respondent, by refusing to discuss any other contract issue, until the parties reached agreement with respect to that item, obstructed the process of meaningful contract negotiations, in violation of Section 8(a)(5) of the Act. *Patrick & Co.*, 248 NLRB 390 (1980).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(a)(5), (3), and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. The Respondent, The Salvation Army of Massachusetts Dorchester Day Care Center, is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. District 65, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All teachers, the janitor, cook and social worker employed by Respondent at its 26 Wales Street, Dorchester, Massachusetts, location, excluding all other employees, guards, the assistant director, the educational coordinator, managerial employees and all supervisors as defined in Section 2(11) of the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein the Union has been, and is now, the exclusive representative of all employees in the aforesaid bargaining unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By demanding, as a condition of continuing negotiations, that the Union agree to a "religious mission" clause, a nonmandatory subject of bargaining, and by refusing to meet and bargain with the Union about mandatory subjects of bargaining, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(5) of the Act.

6. By making unilateral changes in the rates of pay, wages, hours, and other terms and conditions of employment of the bargaining unit employees, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(5) of the Act.

7. By issuing a written warning notice to employee Doris Reynolds, imposing a suspension on her and "docking" her in the amount of 1-1/2 hours' pay, because she supported the Union, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(3) of the Act.

8. By interrogating employees about their union activities, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

9. By informing employees that union activities would not be tolerated, and by instructing employees to remove themselves from the Union, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

10. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, The Salvation Army of Massachusetts Dorchester Day Care Center, Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of em-

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ployment with District 65, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, as the exclusive bargaining representative of its employees in the appropriate unit as described, above.

(b) Demanding, as a condition of negotiations, that the Union agree to a "religious mission" clause, a nonmandatory subject of bargaining.

(c) Making unilateral changes in the rates of pay, wages, hours, and other terms and conditions of employment of the bargaining unit employees.

(d) Issuing written warning notices, imposing suspensions, and "docking" the pay of employees because they support the Union.

(e) Interrogating employees about their union activities.

(f) Informing employees that union activities will not be tolerated and instructing employees to remove themselves from the Union.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Rescind the unilateral changes made in the rates of pay, wages, hours, and working conditions of the bargaining unit employees. However, nothing herein shall require Respondent to vary or abandon implemented wage increases.

(c) Make the unit employees whole for any losses they may have suffered as a result of the unilateral changes in rates of pay, wages, hours, and other terms and conditions of employment, with interest thereon to be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

(d) Rescind the warning to, and suspension of, Doris Reynolds, and remove any reference thereto from its personnel records.

(e) Make Doris Reynolds whole for any losses suffered as a result of the discrimination against her, with interest thereon to be computed in accordance with *Florida Steel Corporation*, supra. See generally *Isis Plumbing Co.*, supra.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its facility in Boston, Massachusetts, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by Respondent's authorized representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

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[5] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."